

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]**Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development (IDED) hereby amends Chapter 79, “Disaster Recovery Business Rental Assistance Program,” Iowa Administrative Code.

The amendments clarify eligibility requirements with respect to lease terms and rescind a self-imposed deadline for expenditures under the program. These amendments allow a business to apply for assistance if it can provide documentation to show that it had a lease in a disaster-damaged space for at least 12 months, even if the lease is a month-to-month lease. The amendments further provide that the amendments are retroactive to awards made on or after March 20, 2009 (the date this program began).

Original rules for this program, adopted by the IDED Board on March 20, 2009, required a business to have a lease or intend to have a lease for 12 months to be eligible for rental assistance. Federal officials have interpreted the rules to require a minimum lease term of one year to be eligible for the program, as opposed to allowing month-to-month lease terms that in sum equal a year or more. The purpose of having a minimum term is to ensure that a rental occurs in a disaster-damaged space for at least a year; that result occurs whether the lease term is one year or a tenant has rented space for 12 consecutive months on a month-to-month term.

Guidance sent out from the state to local program operators and prospective businesses stated the requirements for businesses to be eligible to receive rental assistance. The guidance specified that the eligible businesses included those that entered into one-year leases or that had successfully served 12 consecutive months in a month-to-month lease or some other term lease. Federal officials have determined there is a discrepancy between the rules and the assistance the Department has allowed. Federal officials have advised the Department that this discrepancy could result in disallowance of federal funds for the program.

In compliance with Iowa Code section 17A.4(3), the Department finds that notice and public participation are impracticable and contrary to the public interest because there is an immediate need to correct a provision that will enable federal funding to eligible businesses in the areas of the state that suffered damage due to the natural disasters in 2008. The public interest in the availability of federal funding to distribute outweighs the benefit of a comment period. The Department also finds that the amendments retroactively confer a substantial benefit to the state and its businesses that were affected by the disasters of 2008 and that no businesses or other parties are adversely affected.

The Department also finds, pursuant to Iowa Code section 17A.5(2)“b”(2), that the normal effective date of the amendments should be waived and the amendments be made effective upon filing with the Administrative Rules Coordinator on May 21, 2010. These amendments confer a benefit on the public by allowing more impacted businesses to benefit from disaster funds.

These amendments are intended to implement Iowa Code section 15.109.

These amendments became effective on May 21, 2010.

The following amendments are adopted.

ITEM 1. Amend rule 261—79.3(15) as follows:

261—79.3(15) Eligible business; application review.

79.3(1) An eligible business is a business that:

a. Is located in or planning to locate in a business rental space that was physically damaged by the 2008 natural disaster(s), also referred to as disaster-damaged space; and

b. Has ~~entered into~~ either leased disaster-damaged space for at least 12 months at a market rate or intends to enter or has entered into a minimum one-year, market-rate lease in disaster-damaged space.

79.3(2) Applications received from businesses located in or planning to locate in a building in which the only damage incurred was a result of sanitary or storm sewer backup are subject to review by the department to determine eligibility. Factors used by the department to determine eligibility include, but

are not limited to, review of insurance claims filed, damage to critical infrastructure and review of prior sanitary or storm sewer backup.

79.3(3) Applications received from businesses located in or planning to locate in a building that is zoned residential are subject to review by the department to determine eligibility. Factors used by the department to determine eligibility include, but are not limited to, review of the rental lease agreement, business plan and community comprehensive plan.

ITEM 2. Amend subrule 79.5(1) as follows:

79.5(1) *Types of financial assistance available.* An administrative entity shall provide financial assistance to an eligible business in compliance with the terms and conditions described in this rule. An administrative entity may award funds in the form of a forgivable loan to a business that has either leased disaster-damaged space for at least 12 months at a market rate or has entered into a minimum one-year, market-rate lease agreement for disaster-damaged space. A forgivable loan is a loan that will be forgiven if the business remains open for the duration of the six-month period for which rental assistance is awarded.

ITEM 3. Rescind subrule **79.5(3)**.

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